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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

PUBLIC COPY

[redacted]

File: WAC 02 009 52358 Office: California Service Center Date: MAR 26 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Helen E Crawford for

Robert P. Wiemann, Director
Administrative Appeals Offi

ce

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a computer graphic design desktop publishing company. It seeks to employ the beneficiary permanently in the United States as a graphic designer. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary had the requisite experience as of the priority date of the visa petition.

On appeal, counsel submits a brief.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

8 C.F.R. § 204.5(l)(3) states, in pertinent part:

> (ii) *Other documentation* -- (A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.
>
> (B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupational designation. The minimum requirements for this classification are at least two years of training or experience.

The Application for Alien Employment Certification (Form ETA 750), filed with the Department of Labor on December 2, 1996, indicates that the minimum requirement to perform the job duties of the proffered position is three years of experience in the job offered.

Counsel initially submitted a letter of experience. On February 13, 2002 the petitioner was requested to submit evidence that the beneficiary had the requisite three years of experience. The director noted that the petitioner and the beneficiary had the same first and last name.

The petitioner responded by submitting a letter from the beneficiary, a letter from [redacted] President of [redacted] and a letter from [redacted] written by [redacted]

The director concluded that the evidence submitted was insufficient to establish the beneficiary's requisite training as a graphic designer and denied the petition accordingly. The director noted that:

> In the letter from the beneficiary, the beneficiary mentions that he was a "contract/freelance graphic designer for my Uncle's printing company, [redacted] I work on per project basis. Depending on the size of the job, I work between 20-40 hours a week. Upon his demise in 1992, and with over three years of working with him and meeting his regular clients, I have decided to open up my own graphic design studio." The affidavit from [redacted] states the same. The letter also states: "He has been a graphic designer for my Dad, [redacted] until his demise in October of 1992." Letter from [redacted] of Ruadap and Associates states: "This is to certify that my company has hired [redacted] as contract/freelance graphic designer from 1989-1991 on a per project basis."

On appeal, counsel submits another affidavit of employment from [redacted] Managing Director of Corwen Airfreight International, which attests to the beneficiary's employment as a graphic designer from January 1988 to January 1999, and argues that this in conjunction with the letter from [redacted] establishes the beneficiary's three years of experience.

Counsel's argument is not persuasive. [redacted] only states that the beneficiary worked for her company from 1989 to 1991 on a "per project basis." This cannot be accepted as evidence that the beneficiary had three full years of experience.

Therefore, the petitioner has not overcome the director's decision, and the petitioner may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.